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Counsel for Plaintiff, Adrienne Hudson

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ADRIENNE HUDSON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FIRST TRANSIT, INC.,

Defendant

Case No.: 10-CV-03158

CLASS ACTION

**JOINT STIPULATION TO EXTEND
BRIEFING SCHEDULE**

Judge: Honorable William Alsup
Dept: Courtroom. 9, 19th Floor

1 1. On July 20, 2010, Plaintiff filed this putative class action against Defendant
2 pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), the California Fair Housing and
3 Employment Act (“FEHA”), and the California Unfair Business Practices Act (“UCL”) alleging
4 that Defendant’s policy of excluding persons with certain criminal records from bus driver,
5 mechanic, and dispatcher positions (“Covered Positions”) has a disparate impact on African-
6 Americans and Latinos, and is not justified by business necessity.

8 2. On October 28, 2010, the Court entered a scheduling order, pursuant to FRCP
9 16(b), requiring Plaintiff to file her motion for class certification by April 7, 2011. Subsequently,
10 the parties agreed to complete class certification related discovery – except for class certification
11 expert discovery – by March 11, 2011.

13 3. On October 28, 2010, Plaintiff served her First Requests for Production of
14 Documents.

16 4. On November 9, 2010, Defendant served amended Initial Disclosures pursuant to
17 Rule 26(A) which supplemented its disclosures and initial production made October 21, 2010.

18 5. In late October and early November, Defense counsel met and conferred with
19 counsel in Chicago who represent Defendant in separate background check litigation with the
20 belief, ultimately incorrect, that the bulk of the responsive data had previously been pulled and
21 sent to counsel in Chicago. Defense counsel received documents from Chicago counsel on
22 December 9, 2010, but after a protracted review, determined that the majority of these documents
23 were not responsive. The approximately 7,000 pages of responsive documents received from
24 counsel in Chicago were served on December 17, 2010, December 30, 2010 and January 7, 2011.

26 6. On December 2, 2010, in advance of its deadline to respond to Plaintiff’s written
27 discovery, Defendant requested that the parties meet and confer regarding the scope of Plaintiff’s
28

1 requests. On December 10, 2010, pursuant to an agreed upon extension, Defendant served its
2 written discovery responses on Plaintiff, but produced no additional documents. On December 14,
3 2010, Plaintiff's counsel requested that Defendant agree to meet and confer regarding the timing
4 of Defendant's document production. On December 17, 2010, Defendant described the efforts
5 that it was taking to collect and review responsive documents but, with the intervening holidays,
6 was unable to provide a date certain by which it would produce all responsive documents.
7

8 7. On December 17, 2010, Defendant produced nearly 2,000 pages of applicant logs.

9 8. On December 30, 2010, Defendant produced an additional 4,000 pages of
10 applicant logs.
11

12 9. Despite these productions, Defendant ran into several obstacles in obtaining the
13 remainder of the data requested by Plaintiff, including lack of access to individuals with historical
14 knowledge regarding location of documents within the organization, lack of knowledge and
15 personnel at First Transit headquarters to locate responsive documents, and the year end holidays.
16

17 10. Nevertheless, in light of the parties' cognizance of the urgency of the matter, and
18 the short window for discovery due to the Court's orders regarding class certification motions, a
19 dedicated team was put in place at FT headquarters to locate all remaining relevant and responsive
20 documents shortly after the first of the year.
21

22 11. On January 13, 2011, Plaintiff deposed the Director of Human Resources for
23 FirstGroup America (Defendant's parent company), Russ Iddings. At the deposition, Defendant
24 produced further responsive documents regarding its background checking policies. Plaintiff
25 questioned Mr. Iddings to determine what additional records Defendant maintains regarding its
26 use of criminal background checks and their potential impact on African-Americans and Latinos.
27
28

1 Thereafter, the parties engaged in extensive written communication regarding Defendant's
2 continuing production of documents.

3 12. On January 21, 2011, Defendant notified Plaintiff via e-mail that it was processing
4 a large volume of documents (anticipated to be over 16.05 GB of data) from Defendant's central
5 office in Cincinnati, Ohio and would be producing responsive documents on a rolling basis over
6 the next few weeks. Based on Defendant's representations, Plaintiff agreed to hold any motion to
7 compel in abeyance until Plaintiff had an opportunity to review Defendant's document production.
8

9 13. On January 31, 2011, pursuant to Local Rule 37-1, the parties conferred again and
10 discussed Defendant's ongoing document production. During that telephone conference,
11 Defendant represented that it had engaged in good faith efforts to produce all pertinent documents
12 (to date approximately 77,500 pages have been produced), and estimated that the production of
13 documents maintained at Defendant's central office would likely be completed by February 11,
14 2011. Defendant anticipates, however, that it will take an additional 30 days to complete the
15 document production of data from Defendant's over two-hundred branch locations.
16

17 14. In light of the large volume of documents that Defendant continues to produce, as
18 well as the unexpected delay in Plaintiff receiving these documents, the parties have agreed to
19 request an extension of the deadline by which Plaintiff must file her Motion for Class
20 Certification.
21

22 15. Plaintiff will need to review Defendant's outstanding document production before
23 briefing the issue of class certification because Plaintiff believes that many of the documents are
24 relevant to whether or not Defendant's criminal-record-related hiring policies have a disparate
25 impact on African-Americans and Latinos and, therefore, whether, there are questions of law or
26 fact common to the class. *See Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, n.15 (1982); *Dukes*
27
28

v. *Wal-Mart Stores, Inc.*, 603 F.3d 571, 603-04 (9th Cir. 2010) (“[P]laintiffs may demonstrate commonality by presenting statistical evidence . . . sufficient to fairly raise a common question concerning whether there is class-wide discrimination.”), *cert. granted, Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 795 (2010).

16. Currently, Plaintiff’s Motion for Class Certification is due on April 7, 2011. The parties jointly request that the deadline for Plaintiff’s motion be extended to July 7, 2011, and that subsequent briefs be filed on a 35-day track pursuant to Local Rules 7-2 and 7-3.

Dated: February 8, 2011

Respectfully submitted,

/s/ Teresa Demchak

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Except that no further extensions will be granted, and no extension of the case management schedule will be granted based on this extension,

PURSUANT TO STIPULATION, IT IS SO ORDERED.

If defendant does not produce discovery in a timely manner, plaintiff's counsel are obligated to bring the problem to the Court's attention by letter brief (*see* Dkt. No. 3 ¶ 25), after meeting and conferring.

Date: February 9, 2011.



William Alsup
United States District Judge